No. 11,145

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE SAINT PAUL MERCURY-INDEMNITY COMPANY OF SAINT PAUL (a Delaware corporation), of Saint Paul, Minnesota, and LIVERMORE WINERY, INCORPORATED (a California corporation), *Appellants,*
vs.
UNITED STATES OF AMERICA, *Appellee.*

On Appeal from the District Court of the United States for the Northern District of California.

BRIEF FOR THE UNITED STATES.

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FILED

APR - 9 1946

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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vs.
UNITED STATES OF AMERICA, *Appellee.*

On Appeal from the District Court of the United States for the Northern District of California.

BRIEF FOR THE UNITED STATES.

OPINION BELOW.

No previous opinion in this case has been rendered.

JURISDICTION.

This appeal involves federal distilled spirits taxes imposed by Section 600 of the Revenue Act of 1918, as amended, and a fruit distiller's bond given pursuant to Section 3260, Revised Statutes. The taxes

sued for, totaling $3,239, were assessed by the Commissioner of Internal Revenue on 1,619.56 proof gallons of distilled spirits produced at Fruit Distillery No. 306, operated by the defendant Livermore Winery, Inc., and lost or removed therefrom without payment of the taxes on December 26 and 27, 1936. The bond was executed by Livermore Winery, Inc., as principal, and the Saint Paul Mercury-Indemnity Company of Saint Paul, as surety, on November 6, 1936, and by its terms covered the period from June 26, 1936, to April 30, 1937. The bond was conditioned upon the faithful compliance with the laws and regulations, the payment of penalties and fines, and payment of all taxes on brandy produced by the principal at the distillery. (R. 14-15.) Demand was made upon the taxpayer and the surety, who refused to pay the amount owing, and the United States filed this suit to recover. Jurisdiction was conferred on the District Court by Section 24, Twentieth, of the Judicial Code. This case was tried on December 19, 1944. (R. 63.) Judgment was entered for the Government March 28, 1944. (R. 40-41.) Within three months and on June 27, 1945, notice of appeal was filed (R. 49-50), pursuant to the provisions of Section 128(a) of the Judicial Code, as amended.

QUESTIONS PRESENTED.

1. Whether the evidence introduced at the trial is sufficient to support the findings of fact made by the District Court, that 1,619.56 proof gallons of brandy were removed from the brandy distillery within the

meaning of Section 600 of the Revenue Act of 1918, as amended.

2. Whether the loss of the brandy in question was caused by casualty within the meaning of Sections 3221 and 3223, Revised Statutes.

3. Whether the District Court erred in admitting evidence offered by the Government over the objections of the defendants, thus requiring a reversal of the judgment.

STATUTES INVOLVED.

The pertinent statutes will be found in the Appendix, *infra,* pages i-vi.

STATEMENT.

This is a suit brought by the United States against the Livermore Winery, Inc., and The Saint Paul Mercury-Indemnity Company of Saint Paul. The complaint sets forth two causes of action, the first seeking recovery from Livermore Winery, Inc., of distilled spirits taxes under Section 600 of the Revenue Act of 1918, as amended, in the sum of $3,239, with penalty and interest incurred on 1,619.56 proof gallons of brandy lost on December 26 and 27, 1936, at $2 per proof gallon. (R. 3-6.) The second cause of action seeks recovery of the same amount from both appellants under the fruit distiller's bond. (R. 7-10.)

The fruit distiller's bond was executed by the Livermore Winery, Inc., as principal, and The Saint Paul

Mercury-Indemnity Company of Saint Paul, as surety, on November 6, 1936 (R. 35), and by its terms covered the period from June 26, 1936, to April 30, 1937 (R. 14). The bond was conditioned to secure faithful compliance with the laws and regulations, payment of penalties and fines, and all taxes on brandy produced by the principal at the fruit distillery. (R. 15.)

On December 26, 1936, at about 11:50 P. M., one Joe Renteria, then employed as night distiller by Livermore Winery, Inc., attached a water hose to the distilling material line and opened the valve, thus turning water into the still to wash it. He failed to open the slop valve and left the premises without shutting off the water. As the still filled with water, there being no opening for egress, the water backed into the still column and into Receiving Tank No. 2. At the close of business on December 26, 1936, Receiving Tank No. 2 contained 1,854 wine gallons of 155 proof brandy or a total of 2,873.70 proof gallons of distilled brandy. (Pltf. Ex. 4 and R. 36.)

On the morning of December 27, 1936, an employee of the Livermore Winery, Inc., found Receiving Tank No. 2 overflowing with a mixture of brandy and water, and he shut off the water running into the still. Receiving Tank No. 2 on December 27, 1936, after the water was shut off, contained 2,159.1 wine gallons of water and brandy mixture of an alcoholic content of 51 proof, or a total of 1,101.4 proof gallons of brandy. Seven hundred and sixty-five gallons of a mixture of water and brandy was recovered from the distillery

material sump in the floor of the distillery, which had an alcoholic content of 20 proof, or a total of 153 proof gallons of brandy, thus making a grand total of 1,254.14 proof gallons of diluted brandy on hand December 27, 1936. (R. 37.)

In determining the quantity lost, the revenue agent deducted 1,254.14 proof gallons, the amount on hand December 27, 1936, from 2,873.70 proof gallons, the amount on hand at the close of business December 26, 1936, and found the loss to be 1,619.56 proof gallons. (R. 37.) Upon this amount the Commissioner entered an assessment of $3,239 at $2 per proof gallon. The District Court found this amount to have been lost through negligence (R. 38), and entered judgment for the Government. (R. 40-41.)

Demand was made upon Livermore Winery, Inc., by the Collector of Internal Revenue for payment of $3,239 taxes on May 4 and May 15, 1937. (R. 38.) On May 25, 1939, demand was made upon both defendants (Pltf. Ex. 3), for the payment of $3,239, together with penalties and interest. Upon a refusal to pay the amount due, this suit was filed.

SUMMARY OF ARGUMENT.

The assessment as made by the Commissioner, standing alone, makes out a *prima facie* case for the Government. Further, the assessment was supported by oral testimony. The loss of 1,619.56 gallons of brandy under the evidence constitutes a removal within the

meaning of Section 600 of the Revenue Act of 1918, as amended.

The record contains no evidence under which the District Court could hold that the loss was the result of a casualty. All the evidence explanatory of the loss shows negligence on the part of Joe Renteria, an employee of Livermore Winery, Inc., within the meaning of Sections 3221 and 3223, Revised Statutes. The documentary evidence, which was admitted by the Court over the appellants' objections, was properly received, since the certificate of assessment was certified under Section 882, Revised Statutes, as amended, and the other exhibits were acknowledged by proper officers of Livermore Winery, Inc. The statements of Joe Renteria to witness Bulfinch were made at the distillery in the presence of Guiseppe Groci, who was vice-president of the Livermore Winery, Inc., and superintendent of the distillery. Thus the statements of Renteria were made in the presence of Livermore Winery, Inc., and under Section 1870 of the California Civil Code of Procedure were admissible. In any event there is no showing of prejudicial error.

ARGUMENT.

I.

THE EVIDENCE IN THE RECORD SUPPORTS THE FINDINGS OF FACT MADE BY THE DISTRICT COURT.

The United States introduced in evidence a certified copy of the assessment certificate and list, together with the original and the amended monthly report,

Form 15, filed by the Livermore Winery, Inc., for December, 1936, and a letter in the form of an affidavit signed by G. B. Antonini, president of the Livermore Winery, Inc.

These instruments, together with the allegations set out in paragraph V of affirmative defenses alleged by defendants in their amended answer (R. 26-28) are sufficient proof to sustain the judgment.

The certificate of assessment and the assessment list standing alone make out a *prima facie* case of liability to the tax. In *Clifford v. Rothensies,* 46 F. Supp. 782 (E. D. Pa.), the Court said (p. 784):

> In the case at bar, however, plaintiff has failed to show that there were bona fide tenants who were the real parties responsible for the diversion to beverage purposes of the distilled spirits found on his premises. The certificate of assessment in evidence creates a prima facie case of liability to the tax, *United States v. Rindskopf,* 105 U.S. 418, 26 L. Ed. 1131; *Western Express Co. v. United States,* 8 Cir., 141 F. 28, and plaintiff's evidence fails to establish that the tax was improperly assessed against him.

In *Western Express Co. v. United States,* 141 Fed. 28 (C.C.A. 8th), the Court said (p. 30):

> The government was not required in the first instance to go further in the proofs than to submit the assessment list. 18 Int. Rev. Dec. 164 (Circuit Court, N. D., New York); *Delaware Railway Company v. Prettyman et al.,* Fed. Cas. No. 3,767 (Circuit Court, D. Delaware); *United States v. Rindskopf,* 105 U.S. 418-422, 26 L. Ed. 1131. When, therefore, the government presented the

> assessment list, which is conceded to have been regular in form, and rested, it had made out a prima facie case. Without more, it was entitled to a verdict. It then developed upon the defendant below to rebut the case made by a preponderance of evidence. There was not only some evidence in the case to support the verdict, but when all the evidence which supervened is examined, it discloses many cumulative facts and circumstances, which, within the range of reasonable inference, tended to support the verdict.

The District Court in this case properly admitted the assessment, and unless the other evidence in the case refutes it the Government established a *prima facie* case which entitled it to judgment. *United States v. Rindskopf,* 105 U.S. 418.

The error under which appellants' counsel are laboring is presented quite clearly by the Eighth Circuit Court of Appeals in *Paschal v. Blieden,* 127 F. (2d) 398, by this language (p. 403):

> It should be noted that the findings upon which the orders of the referee and the court expunging the claim are based do not seem to be predicated upon the testimony claimed to be in conflict with facts contained in the returns made by the collector, but the orders appear to be founded upon the erroneous view that the assessments are not presumptively correct and that as evidence they do not satisfy the burden of proof cast upon the collector.

The appellants are attempting to get this Court to say that the assessment is not presumptively correct,

and that as evidence it does not satisfy the burden of proof cast upon the Government. For support they cite *United States v. Rindskopf, supra.* This case supports the position of the Government rather than that of the appellants. In quoting from the *Rindskopf* case in *United States Fidelity & G. Co. v. United States,* 201 Fed. 91 (C.C.A. 2d), the Court said (p. 93):

> He and his sureties were at liberty to show that no spirits, or a less quantity than that stated by the commissioner, were distilled within the period mentioned, and thus entirely, or in part, overthrow the assessment. * * *

Applying this principle to the instant case, the appellants have failed to impeach the assessment. They have failed to show that *no* distilled spirits were lost in the month of December, 1936, neither have they shown that a *lesser* quantity than 1,619.56 proof gallons were lost. If the quantity is to be reduced "in part" they must show to what extent. Having failed to show a lesser quantity, the amount of the assessment, and as found by the District Court, is correct.

The principle that the certificate of assessment makes out a *prima facie* case of the amount due is applicable to the surety on a bond as well as to the principal. *United States Fidelity & G. Co. v. United States, supra; United States v. Fidelity & Casualty Co.,* 115 F. (2d) 475 (C.C.A. 3d).

The appellants are attempting to make much of the fact that the distilled spirits in Tank No. 2 were not actually gauged on December 26, 1936. Under the

statute, no actual gauge would be made until the distilled spirits were removed from the premises. It is a far cry to say that the Commissioner cannot make an assessment where because of a loss an actual gauge could not be made. Under Section 3248, Revised Statutes (Appendix, *infra*), the tax attaches to distilled spirits as soon as it is in existence as such. *United States v. One Ford Coupe,* 272 U.S. 321; *United States Fidelity & Guaranty Co. v. United States,* 220 Fed. 592 (C.C.A. 4th); *Stein v. United States,* 81 F. (2d) 542 (C.C.A. 3d).

Section 3309, Revised Statutes, expressly provides:

> If the Commissioner finds that the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon; * * *

An assessment based upon an estimate is lawful. *United States v. United States Fidelity and Guaranty Co.,* 144 Fed. 866 (Conn.); *United States Fidelity & Guaranty Co. v. United States, supra.* Here the calculation is supported by information furnished by the distiller by letter (Pltf. Ex. 4) and on Form 15 (Pltf. Ex. 1). It corroborates the testimony of the Internal Revenue Inspector as to the amount of distilled spirits lost. The admissions made by the distiller are competent evidence against both appellants. *United States v. American Surety Co. of New York,* 56 F. (2d) 734

(C.C.A. 2d). All the evidence in the record substantiates the validity of the assessment and the facts as found by the District Court.

The evidence in the record shows a removal within the meaning of Section 600, Revenue Act of 1918. (Appendix, *infra.*) This Court, in *Rogan v. Conterno,* 132 F. (2d) 726, under a statute which provided that taxes should be payable when the wine was sold, or removed for consumption or sale, held that wine destroyed by fire on the premises was removed within the meaning of the statute. Under facts similar to those in this case, it has been held that the distilled spirits were removed and the distiller became liable for the taxes. *Joseph E. Seagram & Sons v. Smith,* 113 F. (2d) 357 (C.C.A. 7th); *Joseph E. Seagram & Sons v. United States,* 36 F. Supp. 1013 (C. Cls. 1941), certiorari denied, 314 U.S. 653.

The appellants having failed to impeach the Government's testimony, the judgment must stand.

II.

THE LOSS RESULTED FROM NEGLIGENCE AND NOT FROM A CASUALTY.

The uncontradicted evidence in the record shows that the loss of the distilled spirits was incurred through the overflow of Receiving Tank No. 2, and the overflow was caused through the acts of Joe Renteria who, at the time, was night distiller at the winery.

A corporation is liable for the acts of its agents when those acts come within the scope of the employment. *In re Mifflin Chemical Corp.,* 123 F. (2d) 311 (C.C.A. 3d).

The loss is alleged in paragraph 5 of the appellants' amended answer (R. 27), in this language:

> That without the knowledge or consent of defendant, a *person unknown,* * * * caused a hose to be connected to and with the Livermore City Water system, * * * that thereafter a faucet was turned on by *persons unknown* to defendant, * * *. (Italics supplied.)

The only allegation denied by the appellants is that the person committing the act was an employee.

Even if the person performing these acts were not an employee of the appellant, Livermore Winery, Inc., the loss of the distilled spirits was not brought about by reason of a "casualty." In *Crystal Spring Distillery Co. v. Cox,* 49 Fed. 555 (C.C.A. 6th), the Court in defining "casualty" uses this language (p. 559):

> We are clearly of the opinion that the court below was correct in its holding that "other casualty," as used in said section, meant an accidental destruction by some cause of like character and operation as fire; such as lightning, floods, cyclones, storms, or other uncontrollable force, which ordinary foresight and prudence could not guard against or prevent. The loss from undiscoverable wormholes, or the warping of barrels from excessive summer heat, causing greater evaporation of spirits, is not the destruction by "other casualty" contemplated by said section

3221, Rev. St. In *Welles v. Castles,* 3 Gray, 325, Chief Justice Bigelow, speaking for the court, says that "unavoidable casualty" signifies events or accidents which human prudence, foresight, and sagacity cannot prevent.

It will be noted that the definition of the word "casualty" as defined in the *Crystal Spring Distillery Company* case, *supra,* and as defined in *Welles v. Castles,* 3 Gray 325, from which the Court quoted, signifies an event which a human cannot prevent. In the instant case the event was caused by the acts of some person and, therefore, the loss was not the result of a casualty but of negligence.

Not only have the appellants failed to show loss through casualty, but on the contrary, the affidavit of G. B. Antonini, president of Livermore Winery, Inc., states specifically that Joe Renteria was the still operator and that the act was committed by him while engaged in the performance of his duties. It has been shown conclusively that the loss was incurred through the negligence of the distillery company.

III.

THE EVIDENCE ADMITTED OVER APPELLANTS' OBJECTIONS WAS PROPERLY RECEIVED.

The appellants contend that the Court erred in admitting in evidence the certified copy of the certificate of assessment, with the list attached. Section 882, Revised Statutes, as amended (Appendix, *infra*),

provides that records of an excutive department of the United States shall be admissible as evidence of "any act, transaction, occurrence, or event as a memorandum of which such books, records, or minutes were kept or made." This section provides "(c) The seal of any such executive department or corporation shall be judicially noticed." The certified copy of the assessment bearing the seal of the Treasury Department made that document admissible without further identification or explanation, and the objections which the appellants have made against its admissibility are not well founded.

The Government offered in evidence an affidavit executed by G. B. Antonini, president of the Livermore Winery, Inc., to which the appellants objected, on the ground that no foundation had been laid showing that Antonini was the president of the company, or that it was executed pursuant to any authority as an officer of the company, and further that no showing was made that the affiant had actual knowledge as to the facts set forth in the letter. (R. 94.) The Court received this affidavit which has been referred to as a claim for the abatement of the tax, and the appellants now claim that the receipt of this document in evidence constitutes reversible error.

Section 1161 of the Civil Code of California (Appendix, *infra*), expressly provides that a written document acknowledged by the president of a corporation shall be recorded without further evidence, and Section 1940, California Code of Civil Procedure, pertaining to the admissibility of evidence, provides that:

"Any writing may be proved either: 1. By anyone who saw the writing executed; or, * * * 3. By subscribing witness." The testimony of Arthur F. Bulfinch is to the effect that the instrument was prepared in the office of Mr. Mayhew, where the seal of the corporation was kept, that Mr. Antonini, president of Livermore Winery, Inc., signed and swore to it, and the seal of the corporation was placed upon the second page of the document in his presence. (R. 86.) This testimony satisfied the California statutes, and the document was admitted. (R. 95.)

G. B. Antonini was called as a witness for the appellants in an effort to show that at the time the affidavit was executed he had no personal knowledge of the facts. His testimony shows, however, that he did have information concerning the matter, which he got in Mr. Mayhew's office. (R. 149.) Mr. Groci was present (R. 87), and Mr. Antonini testified that Mr. Groci had told him something about it (R. 151). He testified further that he signed it on the advice of Mr. Mayhew (R. 152), and that he signed it as president of the company (R. 154). He testified further that Mr. Mayhew was paid for taking care of matters pertaining to the winery, particularly the making of reports. (R. 155.) He also stated that he knew what he was signing because he read the document, and that he had had some discussion with Mr. Mayhew about it. (R. 156.)

Mr. Bulfinch asked Mr. Antonini, before he signed the document, if the facts as therein stated were true and he answered, "Yes". (R. 91.) Nowhere in the

record is there any testimony to show that the facts as stated in Mr. Antonini's affidavit are not true, and certainly if the statements were not correct it was the duty of the appellants to refute them. Having failed to refute the statements in the affidavit, the Court must consider them to be true. Clearly there was no error committed by the Court in receiving this document.

The contention is also made by the appellants that the Court erred in permitting Mr. Bulfinch to testify regarding statements made to him by Joe Renteria. (R. 99.)

Paragraph 1870 of the California Code of Civil Procedure, subparagraph 3, provides that an act or declaration of another, in the presence and within the observation of a party, and his conduct in relation thereto, are admissible in evidence. The statements of Joe Renteria, having been made in the presence of Mr. Groci, who was the vice-president of Livermore Winery, Inc. (R. 158), and who took care of the winery, were made in the presence of Livermore Winery, Inc., a party to this action, and were therefore admissible in evidence. *Woods v. Jensen,* 130 Calif. 200.

It has been held that statements made by a person while engaged in the performance of his official duties for a corporation, even though not made in the presence of the party, are admissible against the corporation. *Pan American Co. v. United States,* 273 U.S. 456; *Joslyn v. Cadillac Automobile Co.,* 177 Fed. 863 (C.C.A. 6th); *Southern Tel. & Tel. Co. v. Evans,* 54 Tex. Civ. App. 63; *Arizona Power Co. v. Kellam,* 13

Ariz. 291. It is respectfully submitted therefore that the declarations made by Joe Renteria, in explaining how the loss occurred, were admissible on direct examination of the Government's witness, and the Court did not commit error in allowing Mr. Bulfinch to relate them.

The District Court's refusal to order the production of the distillery plans was not error because it pertained to a collateral matter, and in our opinion it requires no further discussion.

The testimony of Margaret Wood that she sent out notice and demand for tax dated May 4, 1937, and May 15, 1937, to which no objection was made (R. 72-73), was sufficient to prove that demand for payment of the tax was made upon Livermore Winery, Inc. The evidence therefore supports finding of fact numbered 11 (R. 38), without regard to Plaintiff's Exhibit No. 7. Furthermore, under the bond, the principal and surety are liable for the tax, penalty and interest up to the full amount of the bond without demand. *Royal Indemnity Co. v. United States,* 313 U.S. 289; *Maryland Casualty Co. v. United States,* 76 F. (2d) 626 (C.C.A. 5th); *United States v. Maryland Casualty Co.,* 49 F. (2d) 556 (C.C.A. 7th). Demand was made on both appellants May 25, 1937, as evidenced by Plaintiff's Exhibit 3 received without objection. (R. 65.) The receipt in evidence of Exhibit No. 7 was therefore not reversible error.

The evidence objected to by the appellants having been properly admitted, there is substantial evidence in the record to support the findings of fact and con-

clusions of law as made by the District Court. When it appears that there is substantial evidence to support the findings, judicial review shall end. *Commissioner v. Scottish American Co.,* 323 U.S. 119; *Dobson v. Commissioner,* 320 U.S. 489.

CONCLUSION.

No reversible error having been committed by the District Court, and there being substantial evidence to support the findings, the judgment of the lower Court must be affirmed.

Dated, April 8, 1946.

Respectfully submitted,

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(Appendix Follows.)

Appendix.

Revenue Act of 1918, c. 18, 40 Stat. 1057:

SEC. 600 [as amended by Sec. 900 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and Sec. 710 of the Revenue Act of 1938, c. 289, 52 Stat. 447]. (a) There shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, in lieu of the internal-revenue taxes now imposed thereon by law, an internal-revenue tax at the following rates, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law:

* * * * * * *

(4) On and after January 12, 1934, and until July 1, 1938, $2.00, and on and after July 1, 1938, $2.25, on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

* * * * * * *

Revised Statutes:

SEC. 882 [as amended by Sec. 6 of the Act of June 19, 1934, c. 653, 48 Stat. 1109]. (a) Copies of any books, records, papers, or other documents in any of the executive departments, or of any corporation all of the stock of which is beneficially owned by the United States, either directly or indirectly, shall be admitted in evidence equally with the originals thereof, when duly authenticated under the seal of such department or corporation, respectively.

(b) Books or records of account in whatever form, and minutes (or portions thereof) of proceedings, of any such executive department or corporation, or copies of such books, records, or minutes authenticated under the seal of such department or corporation, shall be admissible as evidence of any act, transaction, occurrence, or event as a memorandum of which such books, records, or minutes were kept or made.

(c) The seal of any such executive department or corporation shall be judicially noticed.

SEC. 3221. The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated.

SEC. 3223. When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance, the tax shall not be remitted to the extent of such insurance.

SEC. 3247. Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporization, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

SEC. 3248. Distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of this act, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

SEC. 3253. The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall at any time, when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall

not exclude any other remedy or proceeding provided by law.

Sec. 3254. All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

Sec. 3303. Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall from day to day make, or cause to be made, in a book or books, to be kept by him in such form as the Commissioner of Internal Revenue may prescribe, a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling-apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed. And in another book he shall make like entry of the quantity of grain or other material used for the production of spirits, the time of day when any yeast or other composition is put into any mash or beer for the purpose

of exciting fermentation, the quantity of mash in each tub, designating the same by the number of the tub, the number of dry inches, that is to say, the number of inches between the top of each tub and the surface of the mash or beer therein at the time of yeasting, the gravity and temperature of the beer at the time of yeasting, and on every day thereafter its quantity, gravity, and temperature at the hour of twelve meridian; also, of the time when any fermenting-tub is emptied of ripe mash or beer, the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

Sec. 3307. On the first day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine-gallons and of proof-gallons of spirits produced and placed in warehouse. And the distiller or the principal manager of the distillery shall make and subscribe the following oath, to be attached to said return: "I,....., distiller (or principal manager, as the case may be) of the distillery at....., do solemnly swear that, since the date of the last return of the business of said distillery, dated.....day of.....to .....day of....., both inclusive, there was produced in said distillery, and withdrawn and placed

in warehouse, the number of wine-gallons and proof-gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more." One of the said duplicate returns shall be transmitted by the collector to the Commissioner of Internal Revenue.

Civil Code of California (1937):

SEC. 1161. *Acknowledgment or proof by subscribing witness, and certification thereof, prerequisite to recordation.* Before an instrument can be recorded, unless it belongs to the class provided for in either section eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if person executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by article three of this chapter. [Enacted 1872; Amended by Code Amdts. 1873-74, p. 226; Stats. 1905, p. 602.]